THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.26786 OF 2005

DATED:2.1.2006

Between:

Avula Eswarayya and others

…Petitioners

And

Government of Andhra Pradesh

Rep. by its Special Chief Secretary to Government

Revenue Department, Secretariat, Hyderabad

and others

…Respondents

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ORDER:

The petitioners are residents of Ramasamudram Village. They claim to be in possession of the lands in S.Nos.37/1 to 37/5, 41/1, 41/3 and 45 of Ramachandrapuram Village and that their ancestors were inducted into possession prior to 1.7.1945. They also alleged that one Sista Parvatheesam purchased these lands from one Sundara Ramaiah on 6.8.1933 and leased out the lands to the petitioners or their ancestors. He also alleged that there was dispute between Parvatheesam and the petitioners regarding the right of the petitioners to continue in possession and ultimately Parvatheesam failed to get back the possession. He made attempts to evict the petitioners by high-handed methods compelling the petitioners to file O.S.No.163 of 1961 on the file of the Court of District Munsif,

Markapuram. The said Court decreed the suit on 29.12.1962 granting permanent injunction. The petitioners alleged that they filed necessary applications before the Settlement Officer under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, (for short, the Act) for grant of pattas. After conducting necessary enquiry, the Settlement Officer recorded a finding that the lands are jeroyiti lands and not grazing or poramboke lands, and accordingly granted pattas. However, the names of the petitioners were not duly mutated by the Mandal Revenue Officer. The Director of Settlements, Hyderabad, exercised *suo motu* powers under Section 5 of the Act and by order dt.31.1.1997 observed that the order passed by the Settlement Officer is within the framework of the provisions of Section 11(a) of the Act. The same was challenged by the Mandal Revenue Officer before the Commissioner of Appeals, fifth respondent herein, who by order dt.17.12.2003 rejected the revision. Hence, the petitioners filed the instant Writ Petition assailing the orders of the Government dt.17.8.2005.

The learned counsel for the petitioners contends that the land in S.No.37/1 etc., is not grazing ground poramboke and therefore the conclusion of the Government is not correct. She further contends that the Commissioner of Appeals did not issue any notice before cancelling ryotwari pattas and the Government failed to take the same into consideration. Lastly, she would submit that from 1945 onwards, there has been a litigation, between the original lessor and the petitioners, and between petitioners and third parties, in which the Courts have recorded that the petitioners alone are in possession of the property and therefore the respondents 1 and 5 failed to exercise the powers properly.

Learned Assistant Government Pleader for Revenue (General) submits that when the enquiry under Section 3 of the Act was conducted in 1963, Tahsildar, Markapur, filed a counter objecting the grant of pattas to petitioners contending that the land which is claimed by the petitioners is grazing ground poramboke and therefore pattas cannot be granted. The same was accepted by the Settlement Officer and by order dt.25.2.1963 treated the land in question as grazing ground poramboke. However, again the Settlement Officer by order dt.19.4.1981 granted pattas to petitioners against which the Mandal Revenue Officer filed revision petition. He also submits that the Commissioner of Appeals cancelled the pattas after perusing the record produced, observing that the Settlement Officer passed orders relying on Civil Court orders without there being any proof that the petitioners herein are in lawful possession prior to 1.7.1945 and that the land is non-ryoti in nature being grazing ground poramboke. He placed strong reliance on the decision of this Court in **P.Chenchulakshmamma v. E.A.Tribunal**.

The submission of the learned counsel for the petitioners that notice was not issued to petitioners cannot be accepted, and is misconceived. A perusal of the order passed by fifth respondent would show that the matter was heard on a number of days and persons who were granted pattas by the Settlement Officer were duly represented by a Counsel. Secondly, a perusal of the order of the Settlement Officer would show that even when necessary enquiry was done by the Settlement Officer in 1963, the Mandal Revenue Officer produced necessary material to show that the land is grazing ground poramboke and was declared so. Therefore, granting of

pattas in respect of grazing ground poramboke land is illegal and contrary to the Act.

In **P.Chenchulakshmamma v. E.A.Tribunal** (supra) a Full Bench of this Court held as under.

> Lanka Lands, lands of the description specified in Section 3(16)(a)(b) and (c) of the Estates Land Act, and forest lands are excluded from the purview of Section 13(b)(iii) of the Abolition Act and no ryotwari pattas could be granted to the landholder under that provision in respect of those lands. The mere non-user of the communal lands for the purposes for which they were intended and set apart, as on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, by the time the Abolition Act came to be applied to the estate in which they are situate, they were lands coming within the description specified in Section 3(16)(a)(b) and (c) of the Estates Land Act. Despite the disuse to which they have fallen and despite the other users they have been unauthorisedly and illegally put to they would nonetheless continue to be lands belonging to the category specified in Section 3(16)(a)(b) and (c) of the Estates Land Act in the absence of any order under Section 20-A(1)(b) of the Estates Land Act.

Having regard to the decision of the Full Bench **P.Chenchulakshmamma v. E.A.Tribunal** (supra) the order impugned in this Writ Petition must be held to have passed in accordance with law and no interference is called for.

The Writ Petition is therefore dismissed.

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(V.V.S.RAO, J)

2.1.2006

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